

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA M. SEIFERT and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Minneapolis, Minn.

*Docket No. 97-224; Submitted on the Record;
Issued October 15, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal, and the entire case record and therefore finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty. The Board finds that the decision of the hearing representative of the Office dated and made final on July 22, 1996 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

Subsequent to the hearing representative's decision, appellant requested reconsideration of her claim. In support of her request for reconsideration, appellant submitted a July 22, 1996 letter from her therapist, Kathy Hanson, M.A., L.P. and treatment notes dated July 18, 1996 from Dr. Joseph L. Gendron, a Board-certified psychiatrist.

In a nonmerit decision dated September 12, 1996, the Office reviewed the case and denied modification on the grounds that the evidence was insufficient to warrant modification of its prior decision. The Office noted that the medical evidence submitted by appellant was inconsequential as her claim had been denied on the basis that factors she alleged to have contributed to her emotional condition were either not established as factual or not compensable.

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.² To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.³ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁴

In support of her request for reconsideration of the Office's July 22, 1996 decision, appellant submitted a letter from her therapist and from her psychiatrist. This evidence did not require reopening of appellant's claim as the denial was based on the finding that none of the factors appellant alleged were found to be either factually established or compensable. The submission of evidence which does not address a particular issue involved in the denial of a claim does not constitute a basis for reopening a case.⁵

In the present case, appellant has not established that the Office abused its discretion in its September 12, 1996 decision by denying her request for a review on the merits of its July 22, 1996 decision, under section 8128(a) of the Act, because she has failed to show that the Office erroneously applied or interpreted a point of law, that she advanced a point of law or a fact not previously considered by the Office or that she submitted relevant and pertinent information not previously considered by the Office.

¹ Under section 8128(a) of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or application." 5 U.S.C. § 8128(a).

² 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁵ *Daniel Deparini*, 44 ECAB 657 (1993); *Christopher Angelini*, 44 ECAB 668 (1993).

The decisions of the Office of Workers' Compensation Programs dated September 12 and July 22, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 15, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member